

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOEL L. BROWN,
Plaintiff,

-v-

ANTHONY KEMPINSKI, *et al.*,
Defendants.

18-CV-3287 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

1. Pursuant to the mandate from the Second Circuit, *see* ECF No. 94, the Clerk of Court is directed to issue an amended judgment clarifying that the dismissal of Brown's false arrest claims (*see* ECF No. 66 at 4 – 5 and ECF No. 81 at 2 – 3) under *Heck v. Humphrey*, 512 U.S. 477 (1994), is without prejudice, while the dismissal of his other claims is with prejudice. *See Amaker v. Weiner*, 179 F.3d 48, 52 (2d Cir. 1999) (“Disposition of the case on *Heck* grounds, however, warrants only dismissal *without* prejudice, because the suit may be reinstituted should plaintiff's conviction be “expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.”) (citing *Heck* at 487.)

2. Brown's motion for summary judgment in this closed case is denied as procedurally improper, given that the case has been dismissed. See this Court's previous orders in this case at ECF Nos. 66, 81, 88. The Clerk is directed to close the motion at ECF No. 95.

The Clerk of Court is also directed to mail a copy of this order to the *pro se* plaintiff.

SO ORDERED.

Dated: May 2, 2023
New York, New York


J. PAUL OETKEN
United States District Judge